उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

CrA No 798/04

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J

APPELLANTS

1. Bala Ram son of Laxman Satnami, aged 23 years
2. Mehattar, son of Darshu Satnami, aged 39 years

Both residents of village Toshgaon, P.S. Basna, Tehsil Basna, District Mahasamund (C.G.)

Vs.

RESPONDENT State of Chhattisgarh, through P.S. Basna, Distt. Mahasamund

9-8-2007

Shri Alok Pandey, Advocate for the appellants.

Shri Neeraj Mehta, Panel Lawyer for the State.

The appellants have preferred this appeal against the judgment of conviction and order of sentence dated 3-8-2001 passed by learned 1st Additional Sessions Judge, Mahasamund in S.T. No. 206/1999 whereby appellant Balaram has been convicted under Sections 120B, 363, 366 and 376(1) of I.P.C. and sentenced to undergo R.I. for six months and to pay a fine of Rs. 1000/-, to undergo R.I. for 7 years and to pay a fine of Rs. 1000/-, to undergo R.I. for 10 years and to pay a fine of Rs. 1000/-, to undergo R.I. for 10 years and to pay a fine of Rs. 1000/- respectively with usual default clauses. All the sentences are directed to run concurrently. Appellant Mehattar has been convicted under Section 368 of I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs. 1000/-, in default of payment of

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fine, to further undergo R.I. for 3 months. The other co-accused Saheb Ram has been convicted under Section 120B of I.P.C. and sentenced to undergo R.I. for 6 months and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo R.I. for 3 months.

Case of the prosecution is that on 20-12-1997, missing report of prosecutrix (Ex. P-15) was lodged by P.W. 14 Arjun Das, father of the prosecutrix. The prosecutrix was recovered on 4-5-1998 at about 8.30 from village Laluapur, Rudauli, Faizabad (U.P.) by the police vide Ex. P-16. On the report of the prosecutrix dated 6-5-1998 (Ex. P-18), offence under Sections 363, 366, 376 of I.P.C. was registered against the appellant Balaram Satnami (Ex.P-17). The prosecutrix was sent for medical examination and her M.L.C. report is Ex. P-18-A. After completing the investigation, charge sheet was filed against the appellants and co-accused Saheb Ram. During trial, the prosecution examined 17 witnesses. After recording the statement of the accused and after hearing the counsel for the respective parties, learned trial Court convicted and sentenced the appellants as mentioned above.

Learned counsel for the appellants submits that there is no evidence regarding the age of the prosecutrix. The conviction is based on ossification examination report. The trial Court has assessed the age of the prosecution below 16 years on the basis of ossification test report of Ex. P-14 in which the doctor opined that the age of the

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prosecutrix is 14-15 years however there is possibility of variation of 2-3 years. Entry in the Kotwari register where the date of birth of the prosecutrix is shown as 25-8-1983 has been proved by P.W. 8 Samaru, village Kotwar. However from the statement of the father of the prosecutrix it is evident that information about the birth of the prosecutrix was given to Kotwar of the concerned village by some other person who has not been examined. Therefore, the entry in the Kotwari Register also becomes doubtful. It is also argued that there is no evidence against the appellant Mehattar that he concealed or kept in confinement the kidnapped prosecutrix and there is no basis for conviction of this appellant as the allegation made against him by the prosecutrix during trial does not find place in the F.I.R. or in the case diary.

On the other hand, learned counsel for the State supported the impugned judgment.

So far as the finding regarding the age of the prosecutrix is concerned, the same is based on Kotwari entry of Ex. P-8 as also the Ossification test report of the prosecutrix of Ex. P-14 which have been proved by Kotwar P.W. 8 Samaru and Dr. Alka respectively. From perusal of the document of Ex. P-8 which has been duly proved from Original Kotwari Register, it is clear that the said entry was made on 1-3-1983 on the basis of the information given by Arjun, father of the prosecutrix. On the basis of this document, on the date of incident i.e. 20-12-1997, the age of the prosecutrix was below 15

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years. The above entry is further corroborated by the ossification test report of the prosecutrix in which the age of the prosecutrix has been assessed 14-15 years. Therefore, in the considered opinion of this Court, the finding of the trial Court that the prosecutrix was less than 16 years of age at the time of incident is just and proper and is based on the documentary evidence and ossification test and same does not call for any interference.

So far as conviction of the appellant Balaram is concerned, the prosecutrix has categorically stated that she was forcibly taken by accused Balaram and she was ravished against her wishes by him. Though from the evidence of this witness, the defence has tried to make out a case of consent, however considering the age of the prosecutrix which has already been held to be less than 16 years, consent, if any, is of no consequence.

Now coming to the question of conviction of appellant Mehattar. P.W. 12, the prosecutrix in para 7 of her deposition has stated that she was confined in the house of Balaram by Sukhmoti, Sahab Ram and Mehattar and they had threatened her with her life if she raised alarm and thereafter the appellant Sahab Ram and Arjun took her to the house of Mehattar and there she was confined in a barn and from there she was taken by Sahab Lal and Arjuj near Mandi from where Balaram took her to Sukli Pahad. Thus from the evidence of P.W. 12 the prosecutrix, active participation of the appellant Mehattar in confining the prosecutrix firstly in the home of

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Balaram and thereafter in his home is established. Therefore, finding of the trial Court regarding involvement of the appellant Balaram and Mehattar is also established.

In the result, conviction of the appellant Balaram for offence under Sections 120-B, 363, 366 and 376(1) of I.P.C. and conviction of appellant Mehattar under Section 368 of I.P.C. is established which is based on the evidence available on record.

Learned counsel for the appellants submits that the accused appellants have already undergone more than 9 years jail sentence, therefore, they may be sentenced to the period already undergone by them.

In the result, the appeal is partly allowed. Conviction of the appellant Balaram for offence under Sections 120B, 363, 366 and 376(1) of I.P.C. and conviction of the appellant Mehattar under Section 368 of I.P.C. is maintained, however their sentence is modified and they are sentenced to the period already undergone by them. They be released forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

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